

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: JUL 18 1995

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Form: 1120

Tax Years: All years

Dear Applicant:

This letter constitutes a final adverse ruling with respect to your claim of exemption from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

This ruling is made for the following reasons: You have failed to establish that you are operated exclusively for exempt purposes under section 501(c)(3). You have failed to establish that you are not operated for a substantial nonexempt lobbying purpose.

Donors may not deduct contributions to your organization under section 170 of the Code.

The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the form and for the tax years indicated above within 30 days from the date of this letter with your key District Director for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this ruling to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. The filing of a declaratory judgment suit under section 7428 does not stay the processing of income tax returns and assessment of any taxes.

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[REDACTED]

In accordance with section 6104(c) of the Code, we will notify the appropriate State officials of this action.

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address questions concerning the filing of returns to your key District Director.

Sincerely,

[REDACTED]

[REDACTED]
Director, Exempt Organizations
Division

[REDACTED]

Employer Identification Number: [REDACTED]
Key District Office: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

OCT 6 1994

Dear Applicant:

We have completed our consideration of your application for recognition of exemption from federal income tax. We have concluded that you are not exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. The reasons for our conclusion are explained below.

The information submitted indicates that you were organized as a nonprofit corporation under the laws of the State of [REDACTED].

In your articles of Incorporation, you state your purpose to be as follows:

The Corporation is organized and operated primarily to make government at the local, state and federal levels more effective, efficient and responsive to the people of [REDACTED] by providing an open, objective and nonpartisan forum for the consideration of public policy issues affecting the people of [REDACTED] and providing education and encouragement to individuals who may be interested in public service.

Your application for exemption indicates that your activities will include hosting nonpartisan, educational conferences and seminars and producing educational materials such as pamphlets and commercials to enable the public to make informed and intelligent choices concerning public policy issues.

In your letter dated [REDACTED], you state that you have provided two reports to [REDACTED] citizens concerning a statewide bond referenda held in [REDACTED]. The first report included a cover letter from your organization dated [REDACTED], and several attachments. In the first paragraph of the cover letter, you made the following statement:

At [REDACTED]'s request, I am sending you a special packet of information about the [REDACTED] bond issues that will be on the statewide ballot [REDACTED].

████████████████████

In an attachment to the cover letter entitled "Facts About ██████████'s ██████ Bond Issues," you restate the fact that on ██████████ ██████████ will vote on ██████ enumerated bond issues. Additional excerpts from the attachment are as follows:

Your vote will authorize specific projects to enhance our research capabilities, improve workforce training facilities, protect clean water, preserve ██████████ ██████████'s parks, and pave the way for economic development.

During the recent economic downturn, ██████████ had to make cutbacks to preserve its fiscal integrity and its outstanding credit rating. But cutbacks have an effect, and some of ██████████'s assets were neglected.

██████████'s economy has rebounded, and our State Treasurer ██████████ believes we can now make these investments without raising taxes. With interest rates at a twenty-five year low, and ██████████ borrowing costs even lower because of our AAA bond rating, it makes financial sense to act now to build for our future.

The bond issue will also jump-start the construction industry in ██████████. The \$█████ million investment in construction projects will create some ██████ new jobs throughout the state.

In another attachment to the cover letter entitled "Bonds on the Ballot: A Vote on the Future," you make the following additional statements, among others, regarding the bond issues:

The referendum, which was authorized this year by the General Assembly, represents an innovation in the state's approach to meeting education and infrastructure needs....

A broad coalition of statewide organizations has banded together in support of the ██████ bond issues....

The ██████████ referendum will answer two important questions:

It will decide whether the state takes advantage of advantageous financial conditions to meet crucial infrastructure needs or whether those needs will continue to go unmet.

It will provide an indication of where the voters believe [REDACTED] stands today and in which direction it should be heading.

The second report entitled "[REDACTED]'s Bond Referendum: A Reminder of Voters' Power and Perception" was prepared on your behalf by [REDACTED], a political and public relations consultant who acted as the media strategist for the coordinated bonds campaign. The report analyzed the results of the referendum and made suggestions concerning the lessons learned from the campaign. For instance, the report suggested that the results of the campaign showed that "even an electorate angry at government wants government to work" and "there is no substitute for leadership," namely Governor [REDACTED]'s leadership.

In [REDACTED], you sponsored a forum entitled "A Forum on Crime," which was held the same week that the [REDACTED] General Assembly convened a special session on crime issues. In the brochure you prepared with respect to the forum, Governor [REDACTED] extends an invitation to attend the forum and states, "I look forward to sharing with you my crime-fighting plan during the forum's opening session." Another booklet prepared for the forum sets out Governor [REDACTED]'s crime-fighting plan in detail.

On [REDACTED], you also held a fundraising dinner at the Executive Mansion hosted by Governor [REDACTED] to present your organization and its plans to potential contributors.

In your application for exemption, you indicate that Governor [REDACTED] has been named as your President. In a letter dated [REDACTED], however, you state that "it is anticipated that, by the end of [REDACTED], Governor [REDACTED] will become your Honorary Chairman (a nonvoting, advisory position), and a new non-partisan Board of Directors will be appointed.

Section 501(c)(3) of the Code provides, in part, that an organization is exempt from federal income tax if it is organized and operated for charitable and educational purposes, and if no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, and if no substantial part of its activities is carrying on propaganda or otherwise attempting to influence legislation, and if it does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that an organization is not described in section 501(c)(3) unless it is both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet

either the organizational or operational test, it is not described in section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations provides, in part, that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such purposes described in section 501(c)(3) of the Code, but will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The not "more than an insubstantial part of its activities" standard of section 1.501(c)(3)-1(c)(1) can be understood by reference to Better Business Bureau v. U.S., 326 U.S. 279 (1945), which held that an organization which engaged in some educational activity but pursued nonprofit goals outside the scope of the statute was not exempt under section 501(c)(3). The Court stated that an organization is not operated exclusively for charitable purposes if it has a single noncharitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations which further nonprofit goals outside the scope of section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more section 501(c)(3) purposes unless it serves a public rather than a private interest. An organization must, therefore, show that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or the creator's family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. The term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice or discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational" means the instruction or training of

the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(c)(3)(i) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Section 1.501(c)(3)-1(c)(3)(ii) of the regulations provides that an organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

(a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(b) Advocates the adoption or rejection of legislation.

The term "legislation," as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

Section 1.501(c)(3)-1(c)(3)(iv) provides that an organization is an "action" organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

Rev. Rul. 64-195, 1964-2 C.B. 138, provides that the section 501(c)(3) exempt status of a nonprofit educational organization is not affected by its nonpartisan study, research and assembly of materials in connection with court reform and the dissemination of such materials to the public. This revenue ruling is based on the fact that the instant organization does not expend funds or participate in any way in the presentation of any proposed bills to the State legislature or advocate either approval or

disapproval of the proposed constitutional amendment by the electorate.

Rev. Rul. 67-293, 1967-2 C.B. 185, holds that an organization substantially engaged in promoting legislation to protect or otherwise benefit animals is not exempt under section 501(c)(3) of the Code even though the legislation it advocates may be beneficial to the community.

In Roberts Dairy Company v. Commissioner, 195 F.2d 948 (8th Cir. 1952), cert. denied, 344 U.S. 865 (1952), the organization prepared and distributed materials to inform its members and the public of certain tax disparities between business organizations. The Court held that since the ultimate objective was the revision of the tax laws, the organization was attempting to influence legislation.

In Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973), the court dismissed a claim that the section 501(c)(3) limitations on lobbying and political activities was an unconstitutional restriction on the organization's freedom of speech. The Court stated that the limitations are "clearly constitutionally justified in keeping with the separation and neutrality principles particularly applicable in this case and, more succinctly, the principle that the government shall not subsidize, directly or indirectly, those organizations whose substantial activities are directed toward the accomplishment of legislative goals or the election or defeat of particular candidates."

In American Campaign Academy v. Commissioner, 92 T.C. 1053, 1067-1069 (1989), the Tax Court upheld the Service's position that an organization that as its primary activity operates a school to train individuals for careers as political campaign professionals was not operated exclusively for exempt purposes as described in section 501(c)(3) of the Code. The Academy is an outgrowth of the National Republican Campaign Committee and is funded by the National Republican Congressional Trust. The Academy admits applicants who have a strong commitment to professional campaign involvement on the congressional level. The predominant party affiliation of the candidates with whom the Academy graduates are placed is the Republican party. The Court agreed with the position of the Service that the Academy conferred substantial private benefits on Republican entities and candidates, a nonexempt purpose, and that since more than an insubstantial part of its activities was in furtherance of that nonexempt purpose, it was not entitled to an exemption from taxation under section

501(a). The Tax Court stated:

We begin our analysis by considering whether an organization may transgress the "public rather than private" interest mandate of section 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs., by conferring benefits on persons not having a personal and private interest in the activities of the organization.

...[W]hen the Court concludes that no prohibited inurement of earnings exists, it cannot stop there but must inquire further and determine whether prohibited private benefit is conferred...

Moreover, an organization's conferral of benefits on disinterested persons may cause it to serve "a private interest" within the meaning of section 1.501(c)(3)-1(d)(1)(ii). (Citations omitted.) In this connection, we use "disinterested" to distinguish persons who are not private shareholders or individuals having a personal and private interest in the activities of the organization....

Based on the information submitted, we have concluded that you are an "action" organization under section 1.501(c)(3)-1(c)(3)(i) of the regulations and, therefore, are not operated exclusively in furtherance of exempt purposes within the meaning of section 501(c)(3) of the Code. The materials you have prepared, particularly the literature you submitted to us with respect to the bond referenda and the crime forum, indicate that a substantial part of your activities is attempting to influence legislation by advocating for the adoption or rejection of legislation. Section 1.501(c)(3)-1(c)(3)(ii) of the regulations, Rev. Rul. 67-293, and Roberts Dairy Company v. Commissioner, supra.

Furthermore, you are not operated exclusively for one or more section 501(c)(3) purposes since your projects benefit the private interests of Governor [REDACTED] more than incidentally. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The materials you submitted indicate that your activities such as the dissemination of literature and the organizing of forums are directed toward furthering the legislative agenda and political career of Governor [REDACTED]. American Campaign Academy v. Commissioner, supra.

You are required to file federal income tax returns. Contributions to your organization are not deductible under section 170(c) of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement

[REDACTED]

must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipts by placing the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case but rather to its location.

Sincerely,

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: State Officials of
with Form 5998

cc: [REDACTED]

cc: [REDACTED]

cc: [REDACTED]